IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8601 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT SHIP BREAKERS' ASSOCIATION - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR YH MOTIRAMANI for MR AS VAKIL for Petitioner(s) : 1,
MR LR PUJARI, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/03/2007
ORAL JUDGMENT

1. Shri Y.H. Motiramani under the authority of Shri A.S. Vakil, learned counsel for the petitioner; Shri L.R. Pujari, learned AGP for the respondents. Heard.

2. By this petition, the petitioners are challenging the order dated 12.7.93 passed in Adm-work-6A-Case-43/93 by the Collector, Bhavnagar, directing confiscation of 665 filled LPG cylinders and order dated 3.8.95 passed by the Joint Secretary, Food & Civil Supplies Department, in Appeal Case No. 1093-2649-J/Appeal Application No. 451 of 1993, confirming the order passed by the Collector.

3. The petitioners claim themselves to be a Non Trading Corporation registered under the Bombay Non Trading Corporations Act, 1959. Making a submission that most of its members are engaged in ship breaking business and are in need of bulk quantity of LPG, they applied for supply of LPG. Central Government accepted the application and issued an order for supply of 1000 Metric Tonnes every quarter with a further condition that the Association would endeavour to set up a bottling plant as early as possible, bottling plant to be set up by the Association should conform to all the safety requirements as prescribed by the Chief

Controller of Explosives, apart from other procedural clearances from relevant authorities. Some other conditions regarding supply were also stipulated. Accordingly, the petitioners established a bottling plant, purchased cylinders, started refilling cylinders and supplied the same on "no profit no loss" basis to its members, as asserted by the petitioners.

4. On 30th March, 1993, certain officers from the Collectorate and Civil Supplies Department made inspection and after finding that the petitioners did not possess necessary license under the provisions of the Gujarat Essential Articles [Licensing, Control and Stock Declaration] Order, 1981, they seized 665 gas cylinders. At the time of seizure, they also found that the petitioners were not maintaining records as required under 1981 Control Order. The matter was reported to the Collector, who, vide his letter dated 13.4.93 [Annexure:G] issued a notice to the petitioners to show cause that why appropriate steps under the 1981 Control Order be not taken and 665 gas cylinders

be not confiscated.

5. The petitioners appeared before the Collector and submitted their reply on 10.5.93 vide Annexure:H. It was submitted by them that they are Non Trading Corporation, under the orders passed by the Union of India/Central Government, they are getting bulk supply and as they are not earning any profit nor they are engaged in sale and purchase of essential article/petroleum products, they would not fall within the mischief of the term 'dealer' and for this reason alone, notice could not be issued to them. They also raised various other submissions that the observations that, they were not maintaining accounts or they were not declaring price of the consignment or its weight, were also wrong. According to them, delivery challan was not to contain weight of the consignment and the price to be paid by the consumer, according to them, separate bills given by the dealer were sent to the consumers/members of the Association. It was submitted that the present petitioners had not committed any offence and in

the said facts and circumstances of the case, they were not required to obtain any license under 1981 Control Order.

6. After hearing the parties, learned Collector held that the petitioners fall within the definition of the term 'dealer' and as they have not obtained a license, they had committed breach of 1981 Control Order. He also observed that an association of persons or a Non Trading Corporation would also be deemed to be and in fact, would be a 'seller' and as the petitioners have not obtained necessary requisite license, the goods could be confiscated. He accordingly directed confiscation.

7. Being aggrieved by the said order of confiscation, the petitioners preferred an appeal to the State Government, which came to be dismissed, therefore, the petitioners are before this Court.

8. Learned counsel for the petitioners submits that the petitioners being a Non Trading Corporation would not fall within the definition

of 'dealer' and if that be so, provisions of 1981 Control Order would not apply. His further submission is that the authorities were not justified in holding that the petitioners committed breach of the provisions of the LPG [Regulation of Supply & Distribution] Order, 1988. He also submitted that the learned appellate authority went wrong in observing that the petitioners committed a wrong under the provisions of, or committed breach of the Gas Cylinders Rules, 1981. On the other hand, Shri L.R. Pujari, learned AGP for the respondents submits that from the perusal of the definition of 'dealer' as contained in 1981 Control Order, it would clearly appear that if any person is engaged in purchase and sale of essential commodities, then, he would become a dealer and once he is taken to be a dealer, then, he would be obliged to take a license under 1981 Control Order. His submission is that the learned appellate authority did not hold that the petitioners committed violation of Gas Cylinders Rules, 1981, but in fact, the

appellate authority observed that the petitioners were required to obtain a license for storing cylinders. According to him, the order of the appellate authority does not suffer with any illegality.

9. Clause-5 of Para-2 of 1981 Control Order, which defines 'dealer' reads as under:-

> *"[5] "dealer" means a person, a firm, an association of persons, a company, a corporation or a cooperative society engaged in the business of purchase, sale or storage for sale of any essential article, whether or not in conjunction with any other business and includes his representative, agent or, as the case may be, commission agent, but does not include--*
>
> *[a] an agriculturist who deals in his own agricultural produce but does not engage in the business of purchase, sale or storage for sale of any essential article not produced by him;*
>
> *[b] an oil company dealing in petroleum products;"*

10. A dealer in an ordinary sense or in commercial

sense or in the business world may be somebody who is earning some profit on the dealings which he enters into. A dealer may be something different than a businessman, because, in a given case, a supplier of the workforce may be taken to be a dealer but the manpower of such person would not be goods. A dealer would be a person who is employed in some business of sale and purchase of the articles. In the free zone or free world, a person may deal in any subject, but when the law says that if he wants to deal in particular items, then, he must obtain a license from the authorities, then, such person is required to deal in those items or commodities only after obtaining a license from the competent authority. According to the definition, the word 'dealer' would include a person, a firm, an association of persons, a company, a corporation or a cooperative society. It does not say that the firm is required to be registered or unregistered, an association of persons is required to be registered or unregistered or so. Once an association of

persons is taken to be a dealer because of the definition, then, the second question would arise that whether such person or association of persons or a corporation is engaged in the business of purchase, sale or storage for sale of any essential article. In the present case, undisputedly, the petitioners are purchasing LPG from the Central Government after paying the price. Once somebody pays money, for getting benefit, by purchasing an article, or to have an ownership over that article, then, such person would be said to have purchased that particular article or commodity from the other person who earlier owned it. In the present case, Indian Oil Corporation, under the directions of the Central Government was to supply 1000 Metric Tonnes LPG every quarter to the petitioners after receiving the price of the consignment. The moment they received the price and supplied the LPG, they became sellers, and the petitioners, on payment of the price to the erstwhile owners, after receiving the goods would become purchaser. In a given case, where,

goods are covered under the Sale of Goods Act, then, delivery of the commodity or goods in itself would conclude transaction of sale and purchase. In a given case, one cannot say that though there is a seller, who after receiving the price of the consignment gives possession of the property to someone else, but there is no purchaser. For complete transaction of sale or purchase, there have to be a seller and a purchaser. Seller must own a commodity or property and purchaser must acquire property in the goods by paying money. It is not disputed before me that petroleum products, specially, LPG is an essential article. Once it is held that any essential article or essential commodity was sold by someone and it was purchased by someone, the purchaser if he proves that it was for captive consumption and was not to be distributed to third parties or to someone else, then, such purchaser may not fall within the mischief of the term 'dealer'. Present is not a case of captive consumption. Here, association purchases the property in its

own name, it does not purchase the property in the name of its members. A Non Trading Corporation, which is registered under the provisions of law can sue or be sued in its own name, it is a legal entity and has juridical capacity to sue and to be sued. Once a Non Trading Corporation owns an article and is involved in sale and purchase of the articles, then, such Non Trading Corporation would become a dealer, because, it purchases property in its own name and thereafter distributes it its members. Present is not a case where the petitioners say that after receiving the consignment they are directly supplying the goods to their members, their case is that they are working on “no profit no loss” basis, however, the fact remains that they have established a bottling plant, they are refilling the bottles and are supplying filled gas cylinders. The moment they say that they are undertaking some expenses for refilling and supplying the gas cylinders to their members, then, they become dealers also. They cannot be

allowed to say that because goods are purchased for consumption by the members and as the Corporation is supplying the goods to the members, there is no transaction of sale. It is not disputed before me nor it is the case of the petitioners that after purchasing the goods from the Indian Oil Corporation, they are selling the same to their members, they are receiving price or cost of the articles from their own members. Qua members, the petitioners become a seller and such member becomes purchaser, on the second occasion, the petitioners would become a dealer. The definition further says that the persons so included in the definition if are engaged in the business of purchase, sale or storage for sale of any essential article, whether or not in conjunction with any other business and includes its representative, agent or as the case may be, commission agent. Their case is that they are a Non Trading Corporation. Even if they are representative of the members or agent or commission agent, then again, definition would cover them within the sweep of 'dealer'.

11. Provisions of 1981 Control Order clearly provides that essential article would mean articles specified in Schedule-1. Schedule-1 includes petroleum products.

12. Clause-[21] of Para-2 provides the definition of the word 'sale'. It says that sale in relation to any kind of essential article includes supply or distribution of an essential article and the word 'sell' with all its grammatical variations and cognate expression shall be construed accordingly. Case of the petitioners is that after receiving the supply from the Indian Oil Corporation they are distributing the same to their members. Once they admit that they are supplying or distributing LPG after bottling it, then also, their act would fall within the mischief of 'sale'. Once it is held that the activity of the petitioner is of sale and purchase, then, there is no exemption from clause [5] of Para 2 of 1981 Control Order. It is also to be seen that the Collector has found that the petitioners were not maintaining the records as required

under the Liquified Petroleum Goods [Regulation of Supply & Distribution] Order, 1988.

13. It is also the submission of the petitioners that as they are bulk consumers or bulk purchasers for benefit of members, they would not become dealer. I am unable to hold in favour of the petitioners, because, a bulk purchaser would be a dealer under 1981 Control Order.

14. So far as the argument of the learned counsel for the petitioners that the order passed by the appellate authority is influenced by the provisions of Gas Cylinders Rules, 1981 is concerned, I must immediately reject the said argument. Learned appellate authority has simply observed that as the petitioners were required to obtain necessary license under the provisions of the Gas Cylinders Rules, 1981, they would be taken to be dealer.

15. I am at a loss to understand that why in case like present, the State Government has not taken resort to Section 3 read with Section 7 of the Essential Commodities Act. Once the Collector or

the appellate authority holds that particular person being a dealer had committed breach of the Control Orders, then, such person is liable to be prosecuted under Section 7 of the Essential Commodities Act. For the benefit of the State, I will refer to Section 3 of the Essential Commodities Act,1955 which provides that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Section 4 of the Essential Commodities Act provides that an order made under section 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or the State Government,

and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties. Section-7 of the Act provides that if any person contravenes any order made under Section 3, he shall be punishable and would be liable to be sentenced to different periods if he commits offences under particular provisions of Section 3. In the present case, the moment Collector held that the petitioners have committed breach of 1981 Control Order, then, at least, the authorities should have opened their eyes and could take appropriate steps for prosecution of the office bearers of the petitioner Association. The State Government, it appears, is afraid of big fishes, its net cannot catch those who are beyond the size of their net. I will simply put a question to myself, [not to find an answer] that in case of an ordinary person who had been dealing in essential commodities without license, would the State Government leave him after the confiscation of the goods.

If the State Government wants to act honest and show to the public that it does not care for faces or is not afraid of big guns, then, it has to act in accordance with law and take appropriate action against all who commit wrong punishable under the law.

16. I am not directing the State Government to take an action, but I am simply reminding the State Government that it is obliged and duty bound to act in accordance with law.

17. The petition is dismissed with costs of Rs.5,000/- [Rupees Five Thousand only] to be paid by the petitioners to the respondents. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-